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EXAMINER

NGUYEN BA, HOANG VU A

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL RICHARD SCHNEIDEWEND, JEROME PAUL GEIS,
DARREL WAYNE RANDALL, MICHAEL JOSEPH MCLANE,
MEGAN LOUISE BROWN, and MARK SHERIDAN WESTLAKE

Appeal 2010-004791
Application 09/445,268¹
Technology Center 2400

Before MARC S. HOFF, CARLA M. KRIVAK, and
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 16-25.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ The real party in interest is Thomson Licensing LLC.

² Claims 1-15 have been cancelled.

STATEMENT OF THE CASE

Appellants' invention concerns a user interface for a television receiver that includes coordination between the processes and associated user screens for program purchases and program recordings (Spec. 2). When a user cancels a previously purchased program, a determination is made whether the purchased program appears in the list of programs selected for recording. If it appears in the recording list, then the program is also automatically removed from the recording list when the purchase is canceled (Spec. 3). Similarly, in another embodiment, a purchased-programs list is checked for a program when its recording is canceled by a user (Spec. 30).

Independent claim 16, reproduced below, is representative of the subject matter on appeal.

16. A method for processing a plurality of programs using a video apparatus, the method comprising:

receiving, via said video apparatus, a first user input selecting a first program for removal from a first list representing a list of programs scheduled for recording;

receiving, via said video apparatus, a second user input selecting a second program for removal from a second list representing a list of programs purchased;

determining, via said video apparatus, whether said second program also appears on said first list responsive to said second user input; and

removing, automatically via said video apparatus, said second program from said first list if said second program appears on said first list.

REFERENCES and REJECTIONS

The Examiner rejected claims 16-18, 20, 22, and 24 under 35 U.S.C. § 103(a) based upon the teachings of LaJoie (US Patent No. 5,850,218, Dec. 15, 1998).

The Examiner rejected claims 19, 21, 23, and 25 under 35 U.S.C. § 103(a) based upon the teachings of LaJoie and RCA DRD202RA Satellite Receiver Owner's Manual, Thomson Consumer Electronics, Inc., p. 29 (1996)(hereafter "RCA").

ISSUES

Appellants argue that LaJoie does not render the claimed invention obvious because LaJoie expressly describes only a limited number of conflict situations, not including those recited in the claims on appeal (App. Br. 7). Appellants further contend that LaJoie's failure to suggest the desirability of resolving the conflicts resolved by Appellants' invention makes LaJoie unsuitable for an obviousness rejection of the appealed claims (App. Br. 7). Appellants also argue that the Examiner improperly applied knowledge not within the level of ordinary skill in the art at the time the claimed invention was made, thus engaging in improper hindsight reconstruction (App. Br. 8).

Appellants' contentions present us with the following issues:

1. Does LaJoie teach or fairly suggest removing, automatically via a video apparatus, a purchased program from a list of programs scheduled for recording, if the purchased program appears on the list of programs scheduled for recording, as claims 16, 18, and 22 require?

2. Does LaJoie teach or fairly suggest removing, automatically via a video apparatus, a program from a list representing purchased programs, responsive to user selection of an option to cancel the purchase of a program (subsequent to a user command removing the program from a first list of programs scheduled for recording), as claims 17, 20, and 24 require?

FINDINGS OF FACT

1. LaJoie teaches that “[c]onflicts can arise, for example, when there are overlapping timers, unusual settings . . . , record timers for unpurchased Impulse Pay Per View (IPPV) events, attempts to set up more than a limiting number of VCR timers (e.g., eight), and attempts to purchase more than a limiting number of IPPV events (e.g., eight)” (col. 21, ll. 35-42).

2. LaJoie teaches that “upon . . . attempting to record an IPPV event, set-top terminal 6 will display an interactive warning window 270 alerting the user that the IPPV event sought to be recorded has not been purchased. Interactive warning window 270 then allows the user to press “B” or “C” application definable keys 252 in order to either buy the IPPV event or cancel the warning” (col. 21, ll. 42-49).

PRINCIPLES OF LAW

Section 103(a) forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’

KSR Int’l Co. v. Teleflex, Inc., 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations

including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations.

Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407, (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

A reference may be understood by the artisan to be suggesting a solution to a problem that the reference does not discuss. *See KSR*, 127 S. Ct. at 1742 (“The second error of the Court of Appeals lay in its assumption that a person of ordinary skill attempting to solve a problem will be led only to those elements of prior art designed to solve the same problem. . . . Common sense teaches . . . that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle. . . . A person of ordinary skill is also a person of ordinary creativity, not an automaton.”).

ANALYSIS

Appellants’ argument that LaJoie discloses and addresses only a limited number of conflict situations (App. Br. 9) fails to persuade us that the Examiner erred. LaJoie states that “conflicts can arise, *for example*, when there are overlapping timers, unusual settings . . ., record timers for unpurchased Impulse Pay Per view (IPPV) events, attempts to set up more than a limiting number of VCR timers (e.g., eight), and attempts to purchase

more than a limiting number of IPPV events (e.g., eight)” (FF 1, emphasis added). LaJoie thus lists several *examples* of conflict situations, and does not state that the list is closed-ended.

Further, we agree with the Examiner’s finding that LaJoie teaches selecting a program for purchasing and recording, or for purchasing and watching (Ans. 13), creating the possibility for conflict when one of purchasing and recording is cancelled, and creating the need for the system to determine which action is to be cancelled by a user’s issuance of a cancel command (Ans. 19). We further agree with the Examiner that LaJoie illustrates that it is known to coordinate lists in response to a single user selection (Ans. 16). For example, in purchasing a future IPPV event, a program would be added to both the pending purchases and reminder timers lists (Ans. 16; *see* Figs. 14, 26). LaJoie further teaches resolving conflicts that arise when there are record timers for unpurchased IPPV events (Ans. 16; FF 2).

We agree with the Examiner that the proposed modification to LaJoie is consistent with other conflict-resolution mechanisms explicitly listed in LaJoie that correspond to the Examiner’s reasons why one having ordinary skill in the art would have made the modification, i.e., “to avoid confusing a user” and “to provide a more user-friendly interface.” *See* Ans. 4, 5.

We agree with the Examiner that LaJoie’s listed examples suggest that the Examiner’s proposed modifications take into account only knowledge within the level of ordinary skill in the art, and not knowledge gleaned only from Appellants’ disclosure. *See McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971).

We conclude that the Examiner did not err in rejecting claims 16-18, 20, 22, and 24 under § 103 as being unpatentable over LaJoie, and we sustain the Examiner's rejection.

We are not persuaded by Appellants that RCA fails to remedy the deficiencies of LaJoie with regard to claims 19, 21, 23, and 25, because we are not persuaded that such deficiencies exist. Accordingly, we sustain the Examiner's § 103 rejection of claims 19, 21, 23, and 25 as being unpatentable over LaJoie in view of RCA, for the same reasons given *supra*.

CONCLUSION

1. LaJoie fairly suggests removing, automatically via a video apparatus, a purchased program from a list of programs scheduled for recording, if the purchased program appears on the list of programs scheduled for recording, as claims 16, 18, and 22 require.

2. LaJoie fairly suggests removing, automatically via a video apparatus, a program from a list representing purchased programs, responsive to user selection of an option to cancel the purchase of a program (subsequent to a user command removing the program from a first list of programs scheduled for recording), as claims 17, 20, and 24 require.

DECISION

The Examiner's decision rejecting claims 16-25 is affirmed.

Appeal 2010-004791
Application 09/445,268

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2010).

AFFIRMED

pgc